STATE OF MICHIGAN

COURT OF APPEALS

TES FILER CITY STATION, Plaintiff-Appellant,	UNPUBLISHED March 21, 2006
v	No. 258806 Michigan Tax Tribunal
TOWNSHIP OF FILER, Defendant-Appellee.	LC No. 00-192808

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Petitioner TES Filer City Station, a "qualifying facility" (QF) producing electricity and steam, appeals as of right the judgment of the Michigan Tax Tribunal (tribunal) regarding the assessment of petitioner's 1993 through 1996 ad valorem taxes for its coal and wood waste cogeneration [COGEN] facility.[1] We affirm.

The real property in question is a COGEN designed to manufacture steam and electricity. The site is 5.58 acres located on Manistee Lake in Filer Township in Manistee County. The facility was built as a QF as defined by the federal Public Utility Regulatory Policies Act of 1978 (PURPA), PL 95-617, 92 Stat 3117 (1978), codified in relevant part in 16 USC 796, 824a-3 (1982), beginning in 1988 and began commercial operation in June 1990.[2] The facility was designed to produce an average of 54 megawatts of electricity and an average of 100,000 pounds of extraction steam per hour.

The facility, from its inception, was intertwined with government programs and regulations. The facility was built under the stimulus of PURPA. That legislation was a reaction to a nationwide energy crisis during the 1970s. *Federal Energy Regulatory Comm v Mississippi*, 456 US 742, 745; 102 S Ct 2126; 72 L Ed 2d 532 (1982). PURPA added to the Federal Power Act, 16 USC 791a *et seq*., incentives in the form of guarantees and risk protection for the

[1] A cogeneration facility is a plant that produces two or more usable forms of energy, one of which is electricity.

[2] The construction cost of the facility was nearly $90 million.

construction of supplementary power generating facilities by nonutility generators. Regulated public utilities (in this case, Consumers Power Company[3]) were obligated to buy power from these independent producers. Petitioner is a nonutility generator. If a nonutility generator's power plant met criteria prescribed under PURPA and regulations promulgated under PURPA, it would gain the status of a "qualifying facility."[4] Petitioner secured that status before commencing construction of the facility.

QF's generate electricity using alternative fuel sources and sell their output to regulated public utilities pursuant to individual purchase power agreements (PPAs) as authorized under the act. 16 USC 824a-3(a). Regulated public utilities must purchase the QF's power for its full "avoided cost" -- the amount it would have cost to generate, or to construct facilities to generate, the same power itself or purchase the power from a facility using non-alternative fuel sources. See 18 CFR 292.101(b)(6); *ABATE v MPSC,* 216 Mich App 8, 11-12; 548 NW2d 649 (1996). Petitioner sells electric capacity and energy to Consumers Power Company under a 35-year PPA dated July 31, 1986, as amended. Petitioner also sells steam under the terms of a Steam Purchase Agreement dated July 15, 1986, as amended, with an initial term of fifteen years, to Packaging Corporation of America (PCA), which owns and operates a paper mill property that abuts the site.

I

Petitioner argues that the tribunal erred by finding that the highest and best use of the property was its current use of a QF COGEN. We disagree.

Absent fraud, this Court's review of a Tax Tribunal decision is limited to determining whether the tribunal made an error of law or adopted a wrong legal principle. *Georgetown Place Cooperative v City of Taylor,* 226 Mich App 33, 43; 572 NW2d 232 (1997). The tribunal's factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record. *Danse Corp v City of Madison Hts,* 466 Mich 175, 178; 644 NW2d 721 (2002). Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corp v City of Warren,* 193 Mich App 348, 352-353; 483 NW2d 416 (1992). Failure to base a decision on competent, material, and substantial evidence constitutes an error of law requiring reversal. *Id.; Oldenburg v Dryden Twp,* 198 Mich App 696, 698; 499 NW2d 416 (1993).

The Michigan Constitution provides that real property is to be taxed on the basis of its true cash value. See Const 1963, art 9, § 3. "Highest and best use" is a concept fundamental to the determination of true cash value. "It recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay." *Edward Rose Bldg Co v Independence Twp,* 436 Mich. 620, 633, 462 NW2d 325 (1990). MCL 211.27(1) provides, in pertinent part, that "'true cash value' means the usual selling price at the

[3] Now Consumers Energy.

[4] The relevant Federal implementing regulations are at 18 CFR Part 292.

place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale." The tribunal found that the highest and best use of the property is:

> . . . that legally permissible, physically possible, financially feasible use that demonstrates the maximum net financial return to the land.

The tribunal found that the existing use of the property, a QF COGEN with a PPA, is the property's highest and best use because such use is the maximally productive use of the property.

In determining true cash value, the assessor must consider the "existing use" of the property. MCL 211.27(1). However, this does not preclude consideration of other potential uses. See *Kern v Pontiac Twp,* 93 Mich App 612, 621; 287 NW2d 603 (1979). Thus, to the extent that facilities are suitable for their current use and would be considered for purchase by a hypothetical buyer who would own and operate the facility in accordance with its capabilities, the property must be valued as if such a hypothetical buyer existed. *Clark Equipment Co v Leoni Twp,* 113 Mich App 778, 785; 318 NW2d 586 (1982).

Petitioner concedes in its brief on appeal that

> the subject can economically be put to but one use, the production for sale of electricity and steam. The subject property is, therefore a special-use or single-purpose property. . . . The appraisal texts teach that, The highest and best use of a special-purpose property as improved is probably the continuation of its current use is that use remains viable. Petitioner's appraiser, Paton, correctly opined, "We conclude that the highest and best use of Filer is the use to which it is being put as an improved property – for use in connection with the operation of a relatively new cogeneration facility.
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> * * *
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> The Tribunal did correctly conclude that the subject's HBU was a continuation of its current use as a cogeneration facility.

Petitioner contends, however, that the tribunal erred in its factual determination that the "current use" is that of a QF COGEN *operating under its PPA.* But the tribunal's finding with regard to highest and best use did not relate to the income received as a result of the PPA but, rather, that the maximally productive use of the property is as a QF COGEN operating under a PPA because the QF status and PPA are necessary to put the taxable property to its most beneficial or productive use and therefore a buyer for the property would not exist absent the QF

status and a PPA.[5] This factual finding is conclusive as it is supported by competent, material, and substantial evidence. *Danse Corp, supra* at 178.

II

Petitioner argues that the tribunal erred by using a reproduction cost less depreciation approach in determining the true cash value of the property. True cash value is synonymous with fair market value and is commonly determined by three different approaches: (1) cost less depreciation,[6] (2) sales comparison,[7] and (3) income capitalization.[8] *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991); *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352; 483 NW2d 416 (1992). Variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property. *Meadowlanes, supra* at 485. It is the Tax Tribunal's duty to determine which of the approaches are useful in providing the most accurate valuation under the individual circumstances of each case. *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984). The tribunal is not bound to accept the parties' theories of valuation. It may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination of true cash value. *Jones, supra* at 356.

The tribunal considered the evidence concerning the various approaches to valuation presented by the parties before concluding that "the evidence at trial showed that the cost approach is the most accurate and reliable valuation method under the facts of this case." Citing

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[5] Indeed, the tribunal found that without the QF designation and PPA the facility "would never have been conceived, financed, built, fitted, and operated, because it was and is uneconomic in the workplace" and that the facility is suited to a special use, is not obsolete, and is being used for the particular use for which the facility was designed. These findings are supported by competent, material, and substantial evidence and therefore are not reviewable by this Court. *Danse Corp, supra*. Additionally, the tribunal determined that the cost less depreciation approach is the most reliable method of determining true cash value, and this approach does not take into consideration the income stream derived from the PPA. Rather, it merely takes into consideration that a PPA exists.

[6] Under the cost approach, the land, alone, is valued as if it were unimproved, then the value of any improvements is established separately by calculating what the improvements would cost to newly construct and deducting an appropriate amount for depreciation. See *Antisdale, infra*, at 276, n 1, quoting 1 State Tax Comm Assessor's Manual, Ch VI, p 4.

[7] Under the sales comparison approach, "the market value of a given property is estimated by comparison with similar properties which have recently been sold or offered for sale in the open market." *Antisdale, infra* at 276 n 1, quoting 1 State Tax Comm Assessor's Manual, Ch VI, pp 1-2.

[8] Under the income capitalization approach, the value of a property is established by estimating the future income it could earn. *Antisdale, infra* at 276-277, n 1, quoting 2 State Tax Comm Assessor's Manual, Ch X, p 1.

Great Lakes Division of Nat'l Steel Co v Ecorse, 227 Mich App 379; 576 NW2d 667 (1998), petitioner argues that the trial court erred by using the reproduction cost less depreciation approach because "during the years at issue no one interested in acquiring a cogeneration facility of the capacity of the subject had, and no one would have, constructed such an old-fashioned stoker-fed coal/wood fired cogenerating facility as the subject." It contends that a hypothetical purchaser would build a more efficient combined cycle gas facility during the tax years at issue.

The tribunal specifically found that "it is unreasonable to disregard the reproduction cost of a new coal fired plant, particularly when the subject site has significant advantages as a coal plant location." The tribunal stated:

> It is apparent from the record in this case that the only appropriate substitute plant for the subject is a coal-fired Stoker boiler plant. Only a Stoker boiler can burn wood and wood waste. The choice of fuel type for an electric generating plant is largely site specific. The Filer City site was, during the tax years at issue, a well-chosen site for a coal, wood, and wood waste generating plant with substantial competitive advantages, including access by water transportation, ready access to an electric grid interconnection, adequate permitted ash landfill capacity, with available air emission offsets, a large coal dock suitable for storage of coal, a low cost fuel with stable pricing, and located next to a major steam customer.

The tribunal also found that:

> Petitioner's Exhibit P-114-93, dated December 1995, at page 56, states that "clean coal technology is not standing still and coal remains a potentially strong competitor for gas-fired options, thanks to low and very stable coal prices." Further, and even more importantly, Mr. Tondu's[9] tentative plan, explored in detail at the reopened hearing, to develop a new "Northern Lights Project" 300 megawatt pulverized coal fired plant, as recently as 2001-2002, on subject's site, were it able to achieve QF status and "renaissance zone" tax classification, does considerable injury to the credibility of Petitioner's claim that gas is the only fuel and CCGT the only technology.

The tribunal's determination that coal is a strong competitor for gas-fired plants because of stable coal prices is a conclusive factual finding that is supported by competent, material, and substantial evidence on the record. *Danse Corp, supra.* Thus, the factual premise for petitioner's argument regarding the tribunal's use of the cost less depreciation approach to value is erroneous. Further, petitioner agrees that the facility is a special use facility. Under established law, see, e.g., In *Tatham v Birmingham*, 119 Mich App 583, 591; 326 NW2d 568 (1982), a special use property such as an industrial facility for which no market, an inadequate market, or a distorted market exists, may be valued under the reproduction cost approach. Here, the tribunal determined that the cost less depreciation method is the most reliable method of

[9] Mr. Tondu is one of petitioner's original developers.

determining true cash value. As it is apparent from the record that the tribunal applied its expertise to arrive at an appropriate method of determining true cash value, it did not commit an error of law or adopt a wrong legal principle.

III

Petitioner also asserts that the tribunal erred by considering the PPA as a value influencer when determining the true cash value of the property because the PPA is a "saleable intangible" that cannot be considered as a value influencer." Petitioner states that "the uncontradicted evidence of many witnesses and exhibits established that numerous above-market rate PURPA QF PPAs had been transferred by their cogeneration facility owners for multi-million dollar considerations, leaving the owner of the real and tangible personal property of the facility to sell it separately, or to dismantle it and sell its parts, or to mothball it, to continue to operate it as a merchant plant, or to negotiate a new and different PPA under PURPA at current market avoided cost rates."[10] Petitioner bases its argument that the PPA is a saleable intangible on an unpublished opinion of the Michigan Tax Tribunal, *Midland Cogeneration Venture v City of Midland*, MTT Docket No. 242614, January 23, 2004).[11] This opinion, however, is not published. "An unpublished opinion is not precedentially binding under the rule of stare decisis." MCR 7.215(C). In *MCV*, the tribunal noted that "Testimony from both Petitioner and Respondent indicated that the PPAs in general are and have been sold separately from the real estate. Based on testimony, if MVC were sold, the same contract would not be in force between a new buyer and Consumers." But in the present case such testimony was not presented. To the contrary, the tribunal found that:

> Of the ten power purchase agreement transactions introduced into evidence by Petitioner, nine were contract terminations for which the plan owners received a termination payment and a new power purchase agreement at above spot market rates. The tenth transaction, the Main Energy Recovery Limited Partnership facility, was an arrangement whereby the contract capacity charge was terminated, coupled with a continuation of the contract energy charge. . . .
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> Other than complete or partial terminations, "buy outs" or "buy downs," the record is void of any compelling evidence that a recognizable market or market price exists for the sale or purchase of "power purchase agreements." . . .
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> The amount paid to terminate a power purchase agreement is tied directly to the technical and economic viability of the electric generating plant to which it was attached.

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[10] In support of this statement, petitioner refers in a footnote to "discussion, *infra*, p 46." But nothing on page 46 of petitioner's brief provides factual support for this statement.

[11] See also *Midland Cogeneration Venture v City of Midland*, unpublished opinion per curiam of the Court of Appeals, issued February 21, 2006 (Docket Nos. 254636, 254575, 255066).

Thus, the tribunal found that petitioner failed to establish that the PPA is clearly severable from the real and tangible personal property such that it has a value in and of itself separate from the facility or that the facility would be purchased absent QF status and the PPA. As this is a factual finding by the tribunal that is supported by competent, material, and substantial evidence on the record, it is not reviewable by this Court. *Danse Corp, supra* at 178.

Nonetheless, although the tribunal expended significant time and analysis in addressing the PPA as a value influencer, it did so primarily in the context of addressing and rejecting petitioner's income capitalization approach to valuation.[12] The tribunal ultimately chose to use the cost less depreciation approach to valuation, which determined the true cash value by calculating the reproduction cost of the physical structures of the facility, without regard to any attendant income provided by the PPA. The PPA is a value influencer in this approach only to the extent that the tribunal found that the indisputable evidence demonstrated that a qualifying cogeneration facility would indisputably not be constructed or purchased absent a PPA. In other words, having the PPA in place is an "interest, benefit, and right inherent in ownership of that real property" that affects the "usual selling price" of the property. See, e.g., *Meadowlanes*, supra at 485; *Antisdale, supra* at 285. Like leases, PPAs are properly considered in determining the true cash value because they are value-influencing factors, i.e., incorporeal items that, although "not taxable in and of themselves, can increase or decrease the value of real property." See *Meadowlanes, supra* at 485, 495; *Sweepster, Inc v Scio Twp*, 225 Mich App 497, 501-502 (1997).

IV

Petitioner argues that the tribunal's finding of fact that the facility's indirect (soft) costs equate to 24 percent of total construction costs is erroneous. The trial court found that indirect costs are appropriate for inclusion in a proper cost approach.

Petitioner offers no legal argument but, rather, argues that the trial court's factual finding is erroneous because "the only factual basis as to such capital expenditures in the record was OH Exh R-16, supplied Respondent by Petitioner, which contained a list captioned 'Total Construction Expenditures as of December 31, 1990,' containing 49 items." But it does not appear that the list was relevant to the tribunal in determining indirect costs. Rather, the tribunal concluded that indirect costs equate to 24 percent of total construction cost. This finding is supported by the testimony of several witnesses, including respondent's appraisers and one of petitioner's original developers. One of respondent's appraisers testified that indirect costs approximate 25 to 27 percent of reproduction cost new for very large and complicated properties such as petitioner. Another of respondent's witnesses testified that "general indirect costs for building a power plant are generally in the 20, 25, 30 percent range." And one of petitioner's

[12] The tribunal's statements regarding the PPA with regard to the income approach are unnecessary to the tribunal's decision and therefore are dicta and do not require reversal, even assuming the tribunal was incorrect. *Approximately Forty Acres v Penske*, 223 Mich App 454, 463; 566 NW2d 652 (1997).

original developers testified that as a rule of thumb indirect costs are 25 percent of total construction costs. Another witness for petitioner estimated a COGEN plant's indirect costs to be 25 to 30 percent. The tribunal's finding of fact regarding indirect costs is supported by competent, material, and substantial evidence on the record.

V

Petitioner additionally argues that several of the tribunal's factual findings made in support of its decision to reject petitioner's income approach to value are not supported by competent and substantial evidence and therefore the tribunal erred by rejecting the opinion of petitioner's appraiser and his income approach to value. But the tribunal is not bound to accept the valuation figures or an approach advanced by either the taxpayer or the assessing unit. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). Rather, the tribunal "must make its own findings of fact and arrive at a legally supportable conclusion of true cash value." *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987). The tribunal is free to reject a party's approach to valuation as long as the tribunal makes its own findings of fact and arrives at a legally supportable conclusion of true cash value. Under this test, "it does not matter that the contrary position is supported by more evidence, that is, which way the evidence preponderates, but only whether the position adopted by the agency is supported by evidence from which legitimate and supportable inferences were drawn." *McBride v Pontiac School Dist (On Remand)*, 218 Mich App 113, 123; 553 NW2d 646 (1996). As previously discussed, the tribunal did not err by utilizing the cost less depreciation approach in making a determination regarding true cash value and its findings of fact with regard to that valuation are supported by competent, material, and substantial evidence on the record. It was not an error of law or the adoption of a wrong legal principle for the tribunal to reject the income approach.

VI

Petitioner also contends that "none of the reasons cited by the Tribunal to support its conclusion to effectively exclude Paton's [petitioner's valuation witness] testimony and appraisals on 'credibility' grounds survive scrutiny." It asserts that the tribunal's finding that Paton was not a credible witness was merely the tribunal's attempt to "'appeal proof' his rejection of Petitioner's valuation proofs and approaches by labeling his inappropriate appraisal principles and inaccurate factual conclusions as 'credibility' determinations."

The tribunal made extensive findings of fact regarding the credibility of both petitioner's and respondent's appraisal experts. The tribunal recognized that Paton's lack of "designation, licensing or certification" in and of itself did not render Paton's work less credible. But the tribunal noted many facts that it found to weigh against Paton's credibility in preparing his appraisal. After thoroughly analyzing the methodology employed by both Paton and respondent's appraisers, the tribunal found that respondent's appraisers were more credible. In reviewing a tribunal's decision, this Court will not assess witness credibility. *Great Lakes, supra* at 408.

VII

Petitioner maintains that the tribunal committed several errors of law and adopted wrong legal principles in reaching its value conclusions. First, citing *Clark Equipment Co v Leoni,* 113 Mich App 778, 786-787; 318 NW2d 586 (1992), petitioner argues that the tribunal erred by adopting the appraisals of respondent's appraisers Newburg and Anderson without requiring them to produce the depreciation schedules they used to determine the amount of depreciation to deduct. Anderson and Newburg determined the amount of depreciation to deduct from what the tribunal identified in its opinion as the "State Tax Commission depreciation tables developed by the State Tax Commission utility valuation staff." Their depreciation calculations are contained within their respective appraisals. According to Anderson's testimony, the tables reflect straight line depreciation that recognizes physical wear and tear, and the table he used applied to the particular class of property of electrical generating plants. Anderson testified that the tables "are made available to anybody that requests them." Petitioner provides no reference to the record to support its statement that the "appraisers refused to produce the tables."[13]

Second, petitioner also argues that the tribunal committed an error of law by adopting a "flawed basis for its reproduction cost trending analysis." It asserts that "all four of respondent's appraisals calculated reproduction cost using the Handy-Whitman utility cost trending index" and that this index is "of questionable reliability when used as a primary cost indicator." The manner in which the depreciated reconstruction cost method is commonly applied is through use of the Handy-Whitman Index of Public Utility Construction Costs, a publication, based on elaborate historical cost information and calculations, which allows the user to calculate present construction costs based on historical construction costs, and then to apply appropriate depreciation multipliers. To or from this figure may then be added or subtracted appropriate amounts for various kinds of obsolescence (functional, historical and economic) and other factors, independent of construction costs, which affect the value of the property for ad valorem taxation purposes. The index states that "trended costs are a reasonably accurate measure of the cost of reproducing actual plant." Petitioner has offered no authority for the proposition that the appraisers erred by using the index in this case.

Next, petitioner argues that "the income approaches of Anderson and Newburg cannot be reconciled with the income approach of Oetzel." In support of this argument, petitioner notes that Anderson's 1996 valuation is less than Oetzel's 1996 valuation. Petitioner then concludes

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[13] Additionally, the present case is distinguishable from *Clark Equipment.* In that case, the only expert testimony concerning the appropriate depreciation allowance was from respondent's appraiser. The tribunal rejected the respondent's proposed depreciation figure and reached its own depreciation rate by adopting a figure from a manual that had not been introduced into evidence. This Court concluded that the tribunal's calculation of the depreciation rate denied the adversely affected party an opportunity to know and possibly rebut the evidence which the tribunal will rely on in reaching its decision. *Id.* at 787. In the present case, respondent's appraiser's calculations, which the tribunal adopted, were contained in the appraisal reports and petitioner was not denied the opportunity to know and rebut the calculations.

that "the Tribunal's reliance, without reconciliation or comment on these disparate approaches and conclusions, rather than making its own finding of true cash value . . ." is reversible error. But the tribunal made its own finding of true cash value using the cost less depreciation approach for tax years 1993, 1994, and 1995, and adopted Oetzel's reproduction cost less depreciation approach for tax year 1996.

Last, petitioner contends that the tribunal erred by failing to deduct functional obsolescence from the appraisals of Anderson and Newberg. Petitioner notes that the tribunal recognized that "If the income approach conclusion is appreciably lower than the cost approach conclusion, then it is quite possible that additional depreciation exists in the form of functional or external obsolescence." It contends that "Since Anderson did not know the Tribunal would increase their reproduction cost conclusion so significantly, their appraisals did not address . . . nor did Respondent or the Tribunal ask them about, the introduction of this strong indicator that they should have provided for economic or functional obsolescence." Petitioner asserts that "the Tribunal, although it correctly stated the obsolescence rule as above quoted, applied a wrong appraisal principle when it failed to apply it to the modified Anderson/Newburg cost approach and income approach conclusions it adopted as its own."

Petitioner's statement that the tribunal adopted Anderson's and Newburg's income approach conclusions is misplaced as the tribunal adopted the cost less depreciation approach. Nonetheless, the tribunal addressed the issue of functional obsolescence in its opinion, stating that "the justification and calculation of extraordinary [functional and economic external] obsolescence fails, in favor of normal depreciation justified and calculated in the proper application of the Cost Approach under conditions of a special purpose property, in accordance with the Tribunal's ruling in this case." Anderson and Newburg deducted depreciation in their cost approach valuations. Petitioner has failed to demonstrate that the tribunal committed an error of law or adopted a wrong legal principle; reversal, therefore, is not warranted. *Danse Corp, supra* at 178.

VIII

Petitioner assert that the tribunal's approach to valuation violates the uniformity requirement of Const 1963, art 9, § 13 because:

> [consideration of the PPA] would result in a situation where two identical PURPA cogeneration facilities across the street from each other could have very different property tax true cash and assessed values. This would follow from the Tribunal's approach where the owner of one had retained its original historical PPA, entitling it to sell at above-market rates, and the owner of the other identical facility had sold its PPA, and was selling its electricity at much lower rates. Under the Tribunal's approach, which considers the owner's PPA, the first would sell for far more than the physically identical property across the street. One would have an assessed value much greater than the other.

But the trial court did not consider the income from the PPA in determining true cash value. Rather, the PPA was considered to the extent that the tribunal determined that the highest and best use of the property is its current use – i.e., a qualifying facility under PURPA.[14] The tribunal's determination of the true cash value of the property is based on value inherent in itself as a qualifying facility under PURPA. The PPA is integral to the economic viability of the facility and a prospective purchaser would presumably be willing to pay more for a facility with a PPA than without because the PPA guarantees a higher income. Ignoring this fact would

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[14] Petitioner cites *Edward Rose, supra,* in support of its position and purports to quote *Edward Rose* case in its brief as holding that "Two identical lots [cogeneration facilities] available for the same ultimate use, would not be equally taxed. . . . We conclude that the disparity in treatment which result from the Tribunal's method of valuation is not permissible under the uniformity provisions of the Michigan Constitution." *But petitioner has presented its quote out of context. Edward Rose* concerned the assessment of vacant improved lots in a residential subdivision. The developer was given multilot discounts. The developer alleged that the true cash value of the property should have been based on comparable multilot sales to builders, rather than on comparable sales of individual lots, resulting in lower true cash value for the lots purchased in volume by the developer than for the lots purchased individually by single lot holders. The Court, quoting *Perry v Big Rapids,* 67 Mich 146, 147; 34 NW 530 (1887), noted that

> The Constitution requires assessments to be made on property at its cash value. This means not only what may be put to valuable uses, but what has a *recognizable pecuniary value inherent in itself, and not enhanced or diminished according to the person who owns or uses it.* [*Edward Rose, supra* at 640-641. Emphasis in original.]

The Court held that "It matters not, accordingly, whether similar tax parcels are owned by the same person. The tribunal's mode of assessment violates the sum and substance of the uniformity mandate." *Id.* at 641. The Court concluded, in the *full* quote not provided by petitioners, that:

> Affording a discount to the multilot owner provides advantageous treatment upon the basis of a factor unrelated to the land itself. It "would produce an inherent preference in favor of developers, as opposed to taxpayers who own single or scattered lots." *St. Leonard Shores Joint Venture, supra,* 61 Md App 215. Two identical lots, available for the same ultimate use, would not be equally taxed. And, practically speaking, the taxing authority would be faced with the problem of where to draw the line – should a discount be allowed for a twenty-lot owner, a fifty-lot owner, or only the one hundred-lot developer? [*Edward Rose, supra* at 641.]

Edward Rose is clearly inapposite and petitioner's reliance on that case is misplaced.

artificially deflate the value of the property, in violation of the tribunal's obligation to determine the true cash value of the property.

IX

Petitioner argues that the tribunal erred in finding that it did not have jurisdiction to consider petitioner's alternative claim that the property should be reclassified as personal property and valued using the multipliers from Chapter 15 of the State Tax Commission Manual. Petitioner's argument is premised on the assertion that similar properties in both the local township and across Michigan were assessed with multipliers and that constitutional uniformity required that the same approach be used in this case. As noted by the tribunal, however, this argument was presented to the tribunal as an "alternative" argument in the event the tribunal was "unable to reach an independent true cash value on the first claim." Because the tribunal was able to independently determine true cash value, and because this argument was presented only "in the alternative," any error in the tribunal's finding that it did not have jurisdiction to consider the claim is harmless.[15]

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald

[15] Nonetheless, petitioner's argument is without merit.